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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,821	08/06/2003	Mickey L. Fong	P08007US00/RFH	6746
881	7590	04/25/2006	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,821

Applicant(s)

FONG, MICKEY L.

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-15, 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 19-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Claims 1-15, 17-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group (a floatation device), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/21/06.
2. Applicant's election with traverse of restriction requirement made 2/15/06 in the reply filed on 2/21/06 is acknowledged. The traversal is on the ground(s) that multiple actions have been ~~previously submitted in connection with above restricted claims~~. This is not found persuasive because applicant's amendment introducing new claims 25-33 caused the restriction made (2/15/06) to be made. Applicant fails to show and point out errors why the restriction was improper. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

Art Unit: 3673

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 25,26,31,32 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen (US 4997310).

Rasmussen discloses a floating barrier arrangement comprising a plurality of barrier units (see col. 5 line 10+), each of said units comprising at least two elongate floatation devices (18) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (12,14,16) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means (62, col. 5 line 10+) for connecting said barrier units together in serial relation to form a floating barrier. Said at least two floatation devices comprise a pair of spaced parallel floatation devices and said connecting framework comprises an A-frame construction.

Art Unit: 3673

With regards to claim 32, it should be noted that the examiner is considering three units and in particular unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2).

5. Claims 25,31 are rejected under 35 U.S.C. 102(b) as being anticipated by White (US 436644).

White discloses a floating barrier arrangement comprising a plurality of barrier units (see Fig. 2), each of said units comprising at least two elongate floatation devices (c,c') each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (D) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means (F) for connecting said barrier units together in serial relation to form a floating barrier.

6. Claims 25,31,32 are rejected under 35 U.S.C. 102(e) as being anticipated by Rorheim (US 6726405).

Rorheim discloses a floating barrier arrangement comprising a plurality of barrier units (see Fig. 8), each of said units comprising at least two elongate floatation devices (5,7) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (2) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means ((17,18), see Figs. 8,9) for connecting said barrier units together in

Art Unit: 3673

serial relation to form a floating barrier. With regards to claim 32, it should be noted that the examiner is considering three units and in particular unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2).

7. Claims 25-32 are rejected under 35 U.S.C. 102(a) as being anticipated by Wooley et al. (US 2003/0136325).

Wooley et al. discloses a floating barrier arrangement comprising a plurality of barrier units (see paragraph [0042]), each of said units comprising at least two elongate floatation devices (this is considered as member 12 depicted in Figure 4 @ the bottom row and as the outermost two) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (this is considered as the rest of member (12) excluding the ones considered as the floatation devices, member 13 and see Fig. 4) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means ((57), see Fig. 10) for connecting said barrier units together in serial relation to form a floating barrier. An open framework, including at least two triangular, longitudinally interconnected frame members (member 13, see Figs. 2-4, the longitudinal members are considered as member (12) not considered as the floatation devices). Superstructure carrying warning sign (this is considered as some of member 12 not considered as floatation devices, (15), see paragraph [0045]). With regards to claim 32, it should be noted that the examiner is considering three units and in particular

Art Unit: 3673

unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2).

8. Claims 25,26, 31 ,32 rejected under 35 U.S.C. 102(b) as being anticipated by Potter (US 3952521).

Potter discloses a floating barrier arrangement comprising a plurality of barrier units (see col. 1 line 27+), each of said units comprising at least two elongate floatation devices (14) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (18,20,22,24,26) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means (see col. 1 line 27+) for connecting said barrier units together in serial relation to form a floating barrier. Said at least two floatation devices comprise a pair of spaced parallel floatation devices and said connecting framework comprises an A-frame construction.

With regards to claim 32, it should be noted that the examiner is considering three units and in particular unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooley et al. in view of Kasai et al. (Us 4174186).

Wooley et al. discloses the invention substantially as claimed. However, Wooley et al. is silent about units being connected together by the floatation means being connected end to end to each other by using cables. Kasai et al. teach units being connected together by the floatation means being connected end to end to each other by using cables (36). It would have been considered obvious to one of ordinary skill in the art to modify Wooley et al. to include connecting means as taught by Kasai et al. in order to prevent separation of the units.

11. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooley et al. (US 2003/0136325) in view of Pugliese (US 1299026)

Wooley et al. discloses a floating barrier arrangement comprising a plurality of barrier units (see paragraph [0042]), each of said units comprising at least two elongate floatation devices (this is considered as member 12 depicted in Figure 4 @ the bottom row and as the outermost two) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (this is considered as the rest of member (12) excluding the ones considered

Art Unit: 3673

as the floatation devices, member 13 and see Fig. 4) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means ((57), see Fig. 10) for connecting said barrier units together in serial relation to form a floating barrier. An open framework, including at least two triangular, longitudinally interconnected frame members (member 13, see Figs. 2-4, the longitudinal members are considered as member (12) not considered as the floatation devices). Superstructure carrying warning sign (this is considered as some of member 12 not considered as floatation devices, (15), see paragraph [0045]). Said at least two floatation devices comprise a pair of spaced parallel floatation devices and said connecting framework comprises an A-frame construction (member (13), see Fig. 4). With regards to claim 22, it should be noted that the examiner is considering three units and in particular unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2). Wooley et al. discloses the invention substantially as claimed. However, Wooley et al. lack floatation means wherein each comprise an outer solid water impermeable tubular shell member, an inner solid water impermeable tubular shell member defining an inner space and disposed within said outer member so as to define a cavity therebetween, a floatation medium in said inner space and a floatation medium within said cavity. Pugliese teaches a floatation device comprising an outer solid water impermeable elongate tubular shell member (b) an inner solid water impermeable elongate tubular shell member (c) concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity (see page 1 col. 55+), and a floatation medium (see page 1

Art Unit: 3673

col. 55+) within said inner tubular shell member. It would have been considered obvious to one of ordinary skill in the art to modify Wooley et al. by substituting the floatation means as taught by Pugliese for the floatation means disclosed by Wooley et al. since such a modification provides a redundancy of protection meaning in the event the outer shell is ruptured then the internal shell still provides protection.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooley et al. in view of Pugliese as applied to claim 21 above, and further in view of Kasai et al..

Wooley et al. (once modified) discloses the invention substantially as claimed. However, the (once modified) Wooley et al. is silent about units being connected together by the floatation means being connected end to end to each other by using cables. Kasai et al. teach units being connected together by the floatation means being connected end to end to each other by using cables (36). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Wooley et al. to include connecting means as taught by Kasai et al. in order to prevent separation of the units.

Art Unit: 3673

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wooley et al. in view of Pugliese as applied to claim 19 above, and further in view of Good (US 6602103)

Wooley et al. (once modified) discloses the invention substantially as claimed. However, the (once modified) Wooley et al. lacks connecting means having upright pivot tubes. Good teaches connecting means having upright pivoting tubes (see Fig. 4). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Wooley et al. to include connecting means having upright tubes as taught by Good in order to reduce the chance of the units separating.

14. Claims 29,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Wooley et al..

Potter discloses the invention substantially as claimed. However, Potter is silent about including a superstructure having signage. Wooley et al. teaches a superstructure having signage ((15), see paragraph [0045]). It would have been considered obvious to one of ordinary skill in the art to modify Potter to include a superstructure with signage (such as warning lights) as taught by Wooley et al. in order to notify other water borne vessels.

Art Unit: 3673

15. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Kasai et al. (Us 4174186).

Potter discloses the invention substantially as claimed. However, Potter is silent about units being connected together by the floatation means being connected end to end to each other by using cables. Kasai et al. teach units being connected together by the floatation means being connected end to end to each other by using cables (36). It would have been considered obvious to one of ordinary skill in the art to modify Potter to include connecting means as taught by Kasai et al. in order to prevent separation of the units..

16. Claims 19, 21,22,are rejected under 35 U.S.C. 103(a) as being unpatentable over Potter (US 3952521) in view of Pugliese

Potter discloses a floating barrier arrangement comprising a plurality of barrier units (see col. 1 line 27+), each of said units comprising at least two elongate floatation devices (14) each comprising an outer water impermeable tubular shell member, and each containing a floatation medium therein, and a connecting framework (18,20,22,24,26) for connecting said floatation devices together in side by side relation, said barrier arrangement further comprising means (see col. 1 line 27+) for connecting said barrier units together in serial relation to form a floating barrier. Potter discloses the invention substantially as claimed. However, Potter lacks pontoon structure having a solid outer water impermeable tubular shell member, an inner solid water impermeable tubular shell member defining an inner space disposed within, and spaced

Art Unit: 3673

from, the outer member so as to define a cavity therebetween, a floatation medium disposed in said cavity, and a floatation medium disposed in said inner space. Further, Potter is silent about the framework being triangular shaped. Pugliese teaches pontoon structure having outer solid water impermeable elongate tubular shell member (b) an inner solid water impermeable elongate tubular shell member (c) concentric with said outer tubular shell member and spaced therefrom so as to form a cavity therebetween; a floatation medium within said cavity (see page 1 col. 55+), and a floatation medium (see page 1 col. 55+) within said inner tubular shell member. It would have been considered obvious to one of ordinary skill in the art to modify Potter by substituting the pontoon means as taught by Pugliese for the pontoon means disclosed by Potter since such modification provides pontoon structure that protects the structure from being damaged from impact.

With regards to the triangular shape, it would have been an obvious matter of design choice to make the framework triangular in shape. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

With regards to claim 22, it should be noted that the examiner is considering three units and in particular unit (1) is connected to unit (3) by floating means (this is considered as the floatation devices of unit 2).

Art Unit: 3673

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Pugliese as applied to claim 19 above, and further in view of Wooley et al..

Potter (once modified) discloses the invention substantially as claimed. However, the (once modified) Potter is silent about including a superstructure having signage.

Wooley et al. teaches a superstructure having signage ((15), see paragraph [0045]). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Potter to include a superstructure with signage (such as warning lights) as taught by Wooley et al. in order to notify other water borne vessels.

18. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Pugliese as applied to claim 21 above, and further in view of Kasai.

Potter (once modified) discloses the invention substantially as claimed. However, the (once modified) Potter is silent about units being connected together by the floatation means being connected end to end to each other by using cables. Kasai et al. teach units being connected together by the floatation means being connected end to end to each other by using cables (36). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Potter to include connecting means as taught by Kasai et al. in order to prevent separation of the units.

Art Unit: 3673

19. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Potter in view of Pugliese as applied to claim 19 above, and further in view of Good (US 6602103)

Potter (once modified) discloses the invention substantially as claimed.

However, the (once modified) Potter lacks connecting means having upright pivot tubes. Good teaches connecting means having upright pivoting tubes (see Fig. 4). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Potter to include connecting means having upright tubes as taught by Good in order to reduce the chance of the units separating.

Response to Arguments

20. Applicant's arguments filed 12/8/05 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references (Potter and Pugliese), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, knowledge generally available to one of ordinary skill in the art allows one to substitute one type of pontoon for another type of pontoon structure. Applicant's argument that Pugliese does not teach free floating floatation units is far more limiting than claimed

Art Unit: 3673

subject matter in claims 19-33. Applicant's argument about connecting means of Kasai have nothing to do with protective structure of Pugliese is not understood. Kasai teaches to connect floating means by cable means. Since Potter is silent about how his floating means are connected, it is obvious to one skilled in the art to connect the floating means of Potter using connecting means as taught by Kasai.

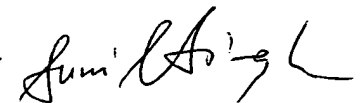
Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



SS 4/13/06

